

IN THE UNITED STATES OF DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:

DESTRUCTION OF FIREARMS
AND AMMUNITION

) MISC. NO. **1:13MC057**
)
) JUDGE
)
) ORDER AUTHORIZING THE
) DESTRUCTION OF CERTAIN
) FIREARMS AND AMMUNITION

JUDGE NUGENT

Before the Court is the Government's motion for an order authorizing the destruction of certain firearms (and ammunition and accessories related thereto). Upon consideration of said motion, the Court finds that:

1. The Northern Ohio Law Enforcement Task Force ("NOLTF") currently has in its possession the firearms (and ammunition and accessories related thereto) described in Exhibit A. NOLTF is a federal task force co-headed by the FBI and the Cleveland Police Department. NOLTF is headquartered in the U.S. Attorney's office in Cleveland Ohio. The firearms, ammunition and accessories related thereto were seized by NOLTF in connection with various criminal investigations during the past several years.

2. Without an order of this Court authorizing NOLTF to destroy the firearms (and ammunition and accessories related thereto) described in Exhibit A, NOLTF will be required to maintain custody

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and control of the firearms, ammunition and accessories for an indefinite period of time. There would not be any corresponding benefit to the public in having NOLTF maintain custody and control of the firearms, ammunition and accessories.

3. Currently, there is no specific statute authorizing the destruction of the firearms, ammunition and related accessories in the circumstances described herein. However, the All Writs Act authorizes "[t]he Supreme Court and all courts established by Act of Congress . . . [to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). As the Supreme Court explained, "[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute."

Pennsylvania Bureau of Correction v. United States Marshals Service, 474 U.S. 34, 43 (1985); see also, Harris v. Nelson, 394 U.S. 286, 299 (1969) (quoting Price v. Johnston, 334 U.S. 266, 282 (1948) (overruled on other grounds by McCleskey v. Zant, 499 U.S. 467 (1991)) (All Writs Act "has served . . . as a 'legislatively approved source of procedural instruments designed to achieve the rational ends of law.'").

4. If a claim by a convicted felon is made to a firearm (and/or ammunition related thereto), the FBI should not be required to return the weapon[s] and/or ammunition to such person, 18 U.S.C. § 922(g)(1) provides in pertinent part that:

It shall be unlawful for any person - (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The courts have likewise held that firearms and/or and ammunition, should not be returned to convicted felons. See United States v. Felici, 208 F.3d 667, 670 (8th Cir. 2000) (convicted felon not entitled to return of firearms, even if provided to third party in trust for felon); United States v. Wacker, 903 F. Supp. 1412, 1414-15 (D. Kan. 1995) (convicted felon not entitled to return of firearm, even if returned to a designated agent since felon would have constructive possession of firearm); United States v. Craig, 896 F. Supp. 85, 89 (N.D.N.Y. 1995) (convicted felon not entitled to return of firearm, even if returned to his wife because he could not delegate authority to possess firearm to a designated agent). Furthermore, it would be improper to allow a third party to take possession and to sell the firearms and/or ammunition on a convicted felon's behalf, because the felon would profit from items that he or she can no longer legally possess. See, United States v. Bagley, 899 F.2d 707, 708 (8th Cir. 1990) ("We agree with the district court 'that to allow [Bagley] to reap the economic benefit from ownership of weapons [] which it is illegal for him to possess would make a mockery of the law.'"). The Sixth Circuit followed Bagley and held that a convicted felon is neither entitled

to the return of firearms nor to the proceeds of their sale. United States v. Ashley, 959 F.2d 236 [TABLE], 1992 WL 58986 (6th Cir. 1992), unpublished opinion. In a subsequent opinion, the Sixth Circuit further held that the prohibition against possessing firearms applies to "both actual and constructive possession, including a prohibition against allowing the firearms to be held in trust for a convicted felon." United States v. Headley, 50 Fed. Appx. 266, 267, 2002 WL 31473476 (6th Cir. 2002), unpublished opinion. As noted by the Courts in Headley and Craig, a defendant may not create a greater power in his designated agent than he himself possesses. Id.; Craig, 896 F. Supp. at 89.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The FBI will publish, on an official government internet site (www.fbi.gov) for at least 30 consecutive days, notice of its intent to destroy the firearms, ammunition and accessories related thereto described in Exhibit A and notice that any person having or claiming a legal interest in the firearm, ammunition or accessory must file a claim with the FBI within thirty (30) days of the final publication of such notice.

2. If within 30 days following the last date of published notice, the FBI receives a claim regarding a particular firearm and/or piece of ammunition and/or accessory described in Exhibit A, the FBI will discuss the matter with the claimant in order to determine whether it is appropriate for the FBI to recognize the

claim. If the FBI and the claimant cannot agree, court action may be required with respect to the item. However, in no circumstances will the FBI be required to return weapons and/or ammunition to a convicted felon.

3. In circumstances where no claim is filed regarding a particular firearm and/or piece of ammunition and/or accessory described in Exhibit A within 30 days following the last date of published notice, the FBI will destroy the item; provided, however, prior to destruction (1) the FBI may perform ballistic tests on the firearms, the results of which may be included in a database for future evidence identification purposes, and (2) the FBI is not required to destroy a particular firearm if it believes the firearm has significance from a historical, artistic or training perspective.

SO ORDERED this 24th day of July, 2013.

Donald E. Nugent
UNITED STATES DISTRICT JUDGE

	A	B	C	D
1	Exhibit A			
2	Make	Model	Serial #	Caliber
3	Beretta	92FS	BER4113877Z	9mm
4	Glock	21	ACD230US	45
5	Titan	Tiger	0091827	
6	RG Ind	RG23	247295	
7	Ruger	P89	309-16931	9mm
8	Jennings	Bryco 59	752548	9mm
9	North American Arms	Derringer	V77850	.22lr
10	Glock	17	BDE696	9mm
11	Beretta	70	A18432	.32 cal
12	RG Ind	40	R089882	.38 cal
13	S&W	59	A462578	9mm
14	Arminius	Titan Tiger	0826026	0.38
15	S&W	59	A708670	9mm
16	RG Ind	57	LG5053	44 cal
17	Arminius	Titan Tiger	0529303	0.38
18	Ruger	P95DC	311-50011	9mm
19	Colt	Python	A4779	0.38
20	Action Arms	AT845	04110	9mm
21	Colt	Police	305783	32 cal
22	Jennings	Bryco 48	056143	.380
23	Ruger	P85	300-44495	9mm
24	S&W	909	VCT6588	9mm
25	Colt	357	3287	357
26	Derringer	Excav	TA38	12627
27	RG Ind	RG40	R062865	.38
28	Glock	19	WT442US	9mm
29	Ruger	P85	303-95315	9mm
30	Beretta	92F	BER238853Z	9mm
31	S&W	4506	TDC8988	45
32	RG Ind	22 Rev	292973	.22lr
33	Davis	P380	AP152964	.380
34	Davis	P380	AP419471	.380
35	S&W	915	TZY9152	9mm
36	Rossi	Interarms	M971	F231554
37	S&W	4006	VYV4342	.357
38	Colt	Lawman	J90979	40 cal
39	Ruger	Super Blackhawk	83-04053	.357
40	Derringer	DHCF	F85498	.44
41	Ruger	P89	310-14390	.38
				9mm

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A

	A	B	C	D
42	Interarms	30M	1679678	9mm
43	Beretta	21A	BBS29895U	.22lr
44	Beretta	20	BE37187V	.25
45	Cobray	M11	89-0049340	9mm
46	Taurus	Rev		.357
47	Kel Tec	P9	13528	9mm
48	RG Ind	RG23	T672699	.22lr
49	Taurus	Rev	2023225	.38
50	S&W	Rev	ANN6797	.357
51	Lorcin	L25	046084	.25
52	S&W	Airweight	409636	.38
53	S&W	Rev	73016	.38
54	RG Ind	RG40	036041	.38
55	Clerke	Rev	853315	.32
56	Titan	Tiger	0531473	.38
57	S&W	10	C920599	.38
58	Davis	D32	045829	.32
59	Richardson	Rev	011867	
60	RG Ind	RG14	211443	.22lr
61	Derringer		013219	.38
62	Rossi	Rev	D518504	.38
63	Derringer		Destroyed	
64	Davis	P32	P042429	.32
65	Llama	Semi Auto	569550	.22
66	FIE	A27	A700445	.25
67	Bryco	Jennings 9	1411068	9mm
68	Walther	PPKS	S021269	.380
69	Davis	P380	AP429861	.380
70	Iver Johnson	Semi Auto	1076US	.380
71	Bauer	25	114766	.25
72	Titan	Semi Auto	A73291	.25
73	Davis	P380	AP233629	.380
74	Davis	P380	AP429862	.380
75	Cobray	M11	89-0048133	9mm
76	HAFDASA	1911	102451	.45
77	Browning	Semi Auto	245PV02274	9mm
78	Intratec	TEC-DC9	D025682	9mm
79	Ruger	P89	310-74822	9mm
80	Interarms	31P	1933119	9mm
81	Lorcin	L380	438864	.380
82	Indian Sales	25	130197	.25
83	Llama	Semi Auto	522498	.380
84	Star	213	16024792	9mm
85	Mondial	1900	None	.22
86	Colt	Govt	70S30616	.38
87	Llama	Semi Auto	915629	9mm

	A	B	C	D
88	Glock	19	WT438US	9mm
89	S&W	59	A173092	9mm
90	Llama	Semi Auto	B03026	45
91	Lorcin	L380	304989	.380
92	Ruger	P89	310-49698	9mm
93	Raven	MP25	891831	.25
94	Titan	Tiger	0105549	.38
95	Black Powser	Revolver	11416	.36
96	S&W	915	TZS6940	9mm
97	Dan Wesson	Rev	256597	.357
98	S&W	Rev	AEE1215	.38
99	AK	74	1965NO1234	7.62
100	S&W	M&P 9C	DSN4380	9mm
101	Iver Johnson	55-SA	B13833	
102	Remington	Wing Master	T216568V	12g
103	Ruger	Mini 14	184-08661	.22lr
104	Remington	870	A875191M	12g
105	Mossberg	Maverick	MV67258D	12g
106	Mossberg	Bullpup	K184863	12g
107	Sears & Roebuck	25		.22lr
108	Sears & Roebuck	58314		15g
109	Marlin	60	11364986	.22lr
110	Marlin	60	05251015	.22lr
111	Remington	870	1153563X	20g
112	Noble	60A		12g
113	Mossberg	500A	K249072	12g
114	S&W	6906	TCD1605	9mm
115	Browning	Semi Auto	390871	6mm
116	Walther	P5	039208	9mm
117	S&W	659	TBH6604	9mm
118	Hi-Point	C9	817142	9mm
119	EAA	Rev	1512659	.38
120	Charter Arms	Off Duty	1006751	.38
121	Ruger	P89	310-23105	9mm
122	Thompson	1911	A0C10032	45
123	Rossi	685	D968135	.38
124	Cobra	Rev	251314	.38
125	Taurus	PT92	TMG01999	9mm
126	S&W	469	A871476	9mm
127	Colt	1911 Commander	70BS3807	45
128	Glock	27	CBH391US	40 cal

	A	B	C	D
	North American			
129	Arms	Rev	D76110	.22
130	RG Ind	RG10	474713	.22s
131	Star	Firestar	2050162	45
132	S&W	59	A467122	9mm
133	Sigarms	P229	AG25402	.357sig
134	Winchester	1300	L3256601	12g
135	Hi-Point	CF	P727555	.380
136	Haskell	JS-45	018517	45
137	Kel Tec	P32	CBA42	.32
138	Hi-Point	C	P038766	9mm
139	Hi-Point	C	824912	9mm
140	Beretta	950B5	BU86748V	.25
141	Taurus	Rev	SD733732	.357